IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA)				
	Plaintiff,) 8:05CR356)		
	vs.) DETENTION ORDER		
RI	CHARD L. SMULL,)		
	Defendant.)		
A.		o 18 U.S.C. § 3142(f) of the Bail Reform Act above-named defendant detained pursuant		
B.	will reasonably assure the appearant X By clear and convincing evidence that	because it finds: hat no condition or combination of conditions ce of the defendant as required. at no condition or combination of conditions		
C.	will reasonably assure the safety of any other person or the community. C. Finding Of Fact The Court's findings are based on the evidence which was contained in the Pretrial Services Report, and includes the following: X (1) Nature and circumstances of the offense charged: X (a) The crime: the possession with intent to distribute in excess of 50 grams of methamphetamine (Count I) in violation of 21 U.S.C. § 841(a)(1) carries a minimum sentence of five years imprisonment and a maximum of forty years imprisonment; the possession with intent to distribute cocaine (Count II) in violation of 21 U.S.C. § 841(a)(1) carries a maximum sentence of twenty years imprisonment; the possession of firearms by a convicted felon (Count III) in violationof 18 U.S.C. § 922(g) carries a maximum sentence of ten years imprisonment; the carrying of a firearm during a drug trafficking felony (Count IV) in violation of 18 U.S.C. § 924(c) carries a minimum mandatory consecutive sentence of five years imprisonment; and the possession of a short shotgun not registered to the defendant in the National Firearms Registration and Transfer Record (Count V) in violation of 26 U.S.C. §§ 5841, 5861, and 5871 carries a maximum sentence of ten years imprisonment. X (b) The offense is a crime of violence - see 18 U.S.C. § 3156(a)(4)(B). (c) The offense involves a large amount of controlled substances, to wit: (2) The weight of the evidence against the defendant is high.			
	X (3) The history and characteristics (a) General Factors: The defendant apper affect whether the defendance of the control of the c			

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		X The defendant has no steady employment.
		The defendant has no substantial financial resources.
		The defendant is not a long time resident of the community.
		The defendant does not have any significant community ties.
		Past conduct of the defendant:
		X The defendant has a history relating to drug abuse.
		The defendant has a history relating to alcohol abuse.
		X The defendant has a significant prior criminal record.
		The defendant has a prior record of failure to appear at court
		proceedings.
	(k	At the time of the current arrest, the defendant was on:
	`	Probation
		Parole
		Release pending trial, sentence, appeal or completion of
		sentence.
	(0	c) Other Factors:
	,	The defendant is an illegal alien and is subject to deportation.
		The defendant is a legal alien and will be subject to deportation
		if convicted.
		The Bureau of Immigration and Custom Enforcement (BICE) has
		placed a detainer with the U.S. Marshal.
V	(4) T	Other:
<u>X</u>		nature and seriousness of the danger posed by the defendant's release
		as follows: The defendant has a substantial criminal history. He has a
		ificant drug abuse history. He has a history of noncompliance with
		pation or release orders. He has a history of violent or assaultive
		avior. He was found in the possession of an arsenal of firearms including
	a SI	ort barreled shotgun.
Χ	(5) Reb	outtable Presumptions
	In determining that the defendant should be detained, the Court also relied on	
	the following rebuttable presumption(s) contained in 18 U.S.C. § 3142(e)	
		the Court finds the defendant has not rebutted:
		a) That no condition or combination of conditions will reasonably assure
		the appearance of the defendant as required and the safety of any
		other person and the community because the Court finds that the crime
		involves:
		X (1) A crime of violence; or
		(2) An offense for which the maximum penalty is life
		imprisonment or death; or
		X (3) A controlled substance violation which has a maximum
		penalty of 10 years or more; or
		(4) A felony after the defendant had been convicted of two or
		more prior offenses described in (1) through (3) above, and
		the defendant has a prior conviction for one of the crimes
		mentioned in (1) through (3) above which is less than five
		years old and which was committed while the defendant was
	V "	on pretrial release.
	<u>X</u> (k	That no condition or combination of conditions will reasonably assure
		the appearance of the defendant as required and the safety of the
		community because the Court finds that there is probable cause to

believe:

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X (1) That the defendant has committed a controlled substance violation which has a maximum penalty of 10 years or more.

X (2) That the defendant has committed an offense under 18 U.S.C. § 924(c) (uses or carries a firearm during and in relation to any crime of violence, including a crime of violence, which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device).

D. Additional Directives

Pursuant to 18 U.S.C. § 3142(i)(2)-(4), the Court directs that:

- The defendant be committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable from persons awaiting or serving sentences or being held in custody pending appeal; and
- 2. The defendant be afforded reasonable opportunity for private consultation with counsel; and
- 3. That, on order of a court of the United States, or on request of an attorney for the government, the person in charge of the corrections facility in which the defendant is confined deliver the defendant to a United States Marshal for the purpose of an appearance in connection with a court proceeding.

DATED: September 29, 2005. BY THE COURT:

s/Thomas D. Thalken United States Magistrate Judge